

Comments on draft Environmental Justice Analysis document.

Letter ID	Commenter Name	Commenter Org.	Text GENERAL Comments	Issues Addressed:	Narrative/Change in Analysis
00036	Ex. 6 Personal Privacy (PP)	Individual	<p>1. Introduction</p> <p>In April of 2017, the US Environmental Protection Agency (EPA) released draft permits for uranium recovery and wastewater disposal associated with the proposed Dewey-Burdock in-situ recovery project. In accordance with EPA policy and Executive Order 12898, the EPA also conducted an environmental justice (EJ) analysis concerning the mine’s possible environmental or health impacts on minority and low-income communities. The report finds that “the city of Edgemont is a potentially overburdened community” based on its low-income status and accumulation of environmental health risks, but that the Dewey-Burdock project is not expected to meaningfully change this status. The EPA also recognizes the need for consultation with tribal communities for whom “the Black Hills is an area of cultural importance,” although it recognizes that consultation activities are not a part of the EJ analysis. Finally, the EJ analysis mentions several times that the EPA will conduct “enhanced public participation and outreach activities” given that UIC wells have the “potential for significant public health or environmental impacts.” These included several public comment sessions in the Black Hills area. We find the EJ analysis deficient in several connected ways. First, the analysis appears at odds with broad public understandings of environmental justice, scholarly expansions on public understandings, as well as the narrower, pragmatic definition of EJ used by the EPA. Second, although the draft EJ analysis and the EPA’s actions seem to suggest an understanding that the project might affect Lakota and other tribal relationships with the Black Hills, the draft EJ analysis as written does not allow the EPA to acknowledge the possible burden the proposed project might place on the culture, religion, or health of Native peoples.</p>	<p>City of Edgemont – No change to low income status nor environmental health risks</p> <p>Tribal Communities Consultation – Not part of EJ analysis</p> <p>Enhanced Public Participation – UIC wells have potential for significant public health or environmental impacts</p> <p>EJ analysis deficient - At odds with broad public understanding of EJ as well as narrower, pragmatic definition used by EPA</p> <p>Impact on Lakota and other Tribal relationships with Black hills the Draft EJ analysis does not acknowledge the possible burden on culture, religion or health of Native Peoples.</p>	<p>Ex. 5 Deliberative Process (DP)</p>
	Ex. 6 Personal Privacy (PP)				
00036	Ex. 6 Personal Privacy (PP)	Individual	<p>2. Defining environmental justice</p> <p>The concept and practice of environmental justice emerges directly from the activism of people of color and Native peoples directly affected by extractive industries, refineries and processing plants, and hazardous waste repositories. In fact, much of this activism was responding to uranium mining, processing, waste disposal, and nuclear weapons testing. In South Dakota, Native and non-Native groups alike devoted many years in the 1970s and 80s to proving that drinking water on the Pine Ridge and Cheyenne River reserves had been contaminated by past mining activities, resulting in undue health burdens for their people. The organization Women of All Red Nations (WARN) conducted many of the first</p>		

		<p>drinking water tests on South Dakota reservations and fought for environmental justice on a national and international scale (LaDuke and Churchill 1985). The Indigenous Environmental Network (IEN) emerged to help facilitate the extremely influential 1991 People of Color Environmental Justice Summit, which directly led to Executive Order 12898, signed by President Clinton in 1994.</p> <p>Based on EO 12898, the EPA defines environmental justice in the following way. “Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.</p> <p>Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.”</p> <p>The EPA goes on to define the meaning of meaningful involvement:</p> <ul style="list-style-type: none">• People have an opportunity to participate in decisions about activities that may affect their environment and/or health• The public's contribution can influence the regulatory agency's decision• Community concerns will be considered in the decision making process• Decision makers will seek out and facilitate the involvement of those potentially affected <p>We will return to this definition in a moment, but first it is important to contrast these principles originally agreed upon at the 1991 Summit (which can be viewed in full at [HYPERLINK "http://www.ejnet.org/ej/principles.html"]). These include, most notably,</p> <p>4) Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.</p> <p>7) Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.</p> <p>11) Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.</p> <p>In contrast to the EPA’s definition of environmental justice, the 1991 Summit identified the specificity of particular activities (e.g., uranium mining) and the specificity of particular communities and their relations with land and law (e.g., Native peoples) as fundamental to achieving environmental justice. Here, environmental justice did not simply mean the absence of harms or equality of distribution of risks, but also the proactive recognition of historic relationships with specific land and environments as well as industries.</p>	<p>Environmental Justice</p> <p>Environmental Justice calls for universal protection from extraction...of nuclear testing...</p> <p>Special Legal and natural relationship to Native Peoples. EJ must recognize a special legal and natural relationship to Native Peoples through treaties, agreements, compacts and covenants affirming sovereignty and self-determination.</p>	<div>Ex. 5 Deliberative Process (DP)</div>
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00036	<div>Ex. 6 Personal Privacy (PP)</div>	Individual	<p>3. Native American perspectives on environmental justice</p> <p>Environmental justice scholarship and activism features various assertions of (and mobilizations against) environmental (in)justice in the US from the perspectives of Native peoples, ranging from industrial pollution and contamination (Johnston, Dawson, and Madsen 2010; Voyles 2015) to hydroelectric power (Howe and TallBear 2006; Lawson 2009) and oil and natural gas development (Estes 2014; Allard 2016) to the threats which climate change poses to traditional food sources and ecosystems (Doerfler, cited in Scheman 2012; Dittmer 2013; Whyte 2017; Wildcat 2009). Importantly, nearly all Native-led engagements with questions of environmental justice are grounded in claims and relationships to land, some aspects of which are legally enshrined by treaties with the US government. Many scholars and activists, including Tsosie (1996; 2009), Whyte (2013), and various Lakota, Dakota, and otherwise-affiliated Native individuals who testified during the EPA public comment sessions, have noted that their communities’ complexly reciprocal relationships with the land escape capture by the narrowly defined terms of federal treaties. Despite this important caveat, treaties remain an important ground from which Native individuals and communities have articulated their visions for environmental justice. This emphasis on land, water, and treaty rights extends to Lakota articulations of environmental justice. Contemporary Lakota concerns with the impacts of proposed uranium mining activities, including the proposed Dewey-Burdock project, are grounded in a longer history of negative fallout from and concerted opposition against harmful mining projects in the Black Hills region.</p> <p>[...]</p> <p>It wasn’t until the 1970s that the health effects of uranium mining began to be noticed by people in the region. A South Dakota Department of Health study in 1976 already found elevated cancer rates around Edgemont (Tupper 2015). Downstream on the Pine Ridge reservation, WARN was conducting the first water tests, which found elevated levels of radioactive elements consistent with</p>	<p>Native relationship with the land</p> <p>Natives relationships with the land in relationship to Treaties-communities’ complex reciprocal relationships with the land escape capture by Treaties</p>	<div>Ex. 5 Deliberative Process (DP)</div>

			<p>toxicity from uranium mining. It would be more than 25 years before an alternative water source was finally in place. Throughout the 1980s, WARN, the Black Hills Alliance, Defenders of the Black Hills, and other Native and non-Native led groups sought to connect treaty rights to environmental justice in a meaningful way based on their histories of contamination, activism, and experience with the EPA and other federal institutions as well as private corporations.</p> <p>Since the initial wave of activism in the 1980s, groups such as Owe Aku and the Black Hills Clean Water Alliance have been working to amplify both Native and non-Native concerns related to uranium mining into advocacy for clean water. Just as these groups’ organizing and advocacy strategies are built upon previous iterations of the environmental justice movement in the Black Hills, so too are their concerns with potential environmental harm from the proposed Dewey-Burdock project grounded in and made more significant by past and ongoing experiences of contamination from historic uranium mining activities. The cumulative effects of past uranium mining, which remain in South Dakotan waterways, bodies, communities today, have been repeatedly cited by the public as one of the most meaningful reasons that contemporary uranium mining is seen as an environmental injustice. The lack of understanding of this history of local and regional environmental justice movements and their connection with the fight for treaty rights (Ostler 2011) is one of the most troubling aspects of the EPA’s draft EJ analysis.</p>	<p>Cumulative effects Cumulative effects of past uranium mining and effects today, Treaty Right Issue</p>	
00036	<div>Ex. 6 Personal Privacy (PP)</div>	Individual	<p>5. Conclusion</p> <p>Outlined above is a broad understanding of the environmental justice concerns the Dewey-Burdock raises for two scholars of environmental politics in South Dakota. Our expertise comes from being students and scholars learning from the individuals and organizations expressing concerns about the Dewey-Burdock project and from a commitment to do our part in amplifying and translating these concerns into concepts recognizable to the EPA. We have attempted to enhance the picture of what environmental justice could look like if the concerns of Lakota and other tribal communities were properly recognized as part of the permitting process. Our brief outline is insufficient to be counted as an environmental justice analysis in its own right; we only seek to highlight the striking absences within the EPA’s draft EJ analysis.</p> <p>With this in mind, we do not see how the proposed permits for the Dewey-Burdock project can be issued and retain any valence of environmental justice. In addressing some of the problems highlighted above, the EPA has a chance to set a precedent for working with Native communities in a manner more consistent with the goal of creating environmental justice.</p> <p>Works Cited</p>	<p>Tribal communities not part of permitting process. Lakota and other tribal communities were not properly recognized as part of the permitting process.</p>	<div>Ex. 5 Deliberative Process (DP)</div>

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00527	<div>Ex. 6 Personal Privacy (PP)</div>	Clean Water Alliance	<p>ENVIRONMENTAL JUSTICE AND NATIONAL HISTORIC PRESERVATION ACT ISSUES</p> <p>The issues involving the EPA’s DRAFT Environmental Justice (EJ) Analysis and its National Historic Preservation Act (NHPA) report are linked and will be discussed briefly in this section.</p> <p>The primary shortcoming of the DRAFT Environmental Justice Analysis is its limitation to a 20-mile radius. While it is true that Edgemont qualifies for impacted status, the 20-mile limitation effectively eliminates people who live downstream and on the Lakota reservations and who are impacted by the destruction of treaty, historical, and cultural sites. Note that both EJ and NHPA analysis should have been completed as part of a full tribal government-to-government consultation before the draft permits or aquifer exemption were released. There has, at this point, already been a violation of trust by the EPA that will be difficult or impossible to remedy.</p> <p>[...]</p> <p>The EJ analysis includes Table 12, which purports to list “Additional State and Federal Permits Powertech is required to obtain” (p. 24). This Table is misleading in several ways that make it look like the company faces few hurdles. First, the table does not include the Clean Air Act permit that the EPA says is required. Second, it does not indicate the current status of either the state water appropriation permits or the state Groundwater Discharge Plan. These permits have not just been “recommended for approval”; they have been put on hold for several years. And third, the NRC’s Source Material License is under appeal in federal court, and this is not mentioned.</p> <p>The EPA also states conclusions about the mining process and its outcomes that are not supported by experience or science in the EJ analysis. This is discussed elsewhere in these comments.</p> <p>The EJ analysis mentions that the public in the White Mesa mill area, where the company wants to take its 11e wastes, is 49% American Indian and Native Alaskan. After making this statement, the agency fails to do an EJ analysis of that site, simply saying that the Dewey-Burdock waste would be a small percentage of the waste at the site. This begs the question – What are the impacts of the mill on the nearly half of the population of the area that should be protected under EJ guidelines? There should at least be a reference to a complete analysis of this issue and, if one doesn’t exist yet, it should be done as part of the Dewey-Burdock process and before further action is taken by the EPA.</p>	<p>20-mile radius is shortcoming in EJ Analysis</p> <p>Limitation of EJ Analysis to 20-mile radius. 20-mile radius effectively eliminates people who live downstream.</p> <p>Treaty violation because Consultation was not completed prior to issuance of draft permits.</p> <p>Violation of Treaty because tribal consultation was not completed before the draft permits were released.</p> <p>Other Permits</p> <p>List of other permits required is not complete.</p> <p>White Mesa Mill Area not included in EJ Analysis</p> <p>Should the EJ analysis include impacts of the mill?</p>	<div>Ex. 5 Deliberative Process (DP)</div>

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00528	<div>Ex. 6 Personal Privacy (PP)</div>	Aligning for Responsible Mining	<p>8. COMMENTS ON THE DRAFT ENVIRONMENTAL JUSTICE (EJ) ANALYSIS FOR THE DEWEY-BURDOCK UIC PERMITTING ACTIONS</p> <p>The Town of Buffalo Gap, SD, with a history of high uranium levels in the water (higher than found in Edgemont, SD) should be included in the EJ analysis to the same extent as Edgemont, SD.</p> <p>[ATTACHMENT: “Location of the Study Area, which includes the Dewey-Burdock Project Area and a 20-mile buffer measured from the approximate Project Area Boundary, and the Edgemont Area, which includes a 5-mile buffer around the City of Edgemont” (image)]</p> <p>Section 1.3 of the EJ Analysis states that the EPA used a 20-mile buffer zone measured from the location of the Dewey-Burdock Project Area Boundary without considering the flows of water or related aquifers that impact areas farther away such as Buffalo Gap, SD. The EPA found that ‘Based on the preliminary screening processes, the City of Edgemont, South Dakota was identified as a community for which the EPA should conduct additional evaluation to determine if the area is a potentially overburdened community as discussed in Section 2.5.”</p> <p>[ATTACHMENT: “Drinking Water Systems Radiological Chemical Data Proximity of Cheyenne River” (image)]</p> <p>The Town of Buffalo Gap, SD, shown in close proximity to the Project Area Boundary, should be included in the EJ Analysis. Like Edgemont, SD, the Town of Buffalo Gap, SD, is a potentially overburdened community.</p> <p>Section 11.0 of the EJ Analysis describes additional, enhanced public participation and outreach requirements that should be made available to the residents of Buffalo Gap, SD.</p> <p>11.0 Conclusions</p> <p>The screening process using EJSCREEN identifies the City of Edgemont as a potentially overburdened community. Thus, the EPA has determined that it is appropriate to conduct enhanced public participation and outreach activities with the aim of encouraging public involvement in the permitting process. The EPA is exercising its discretion to hold a number of public informational meetings and public hearings following issuance of the draft UIC permits and to allow for a longer comment period than that required by regulation. The EPA also proposes to implement appropriate permit requirements intended to</p>	<p>Should 20-mile buffer be expanded?</p> <p>Buffalo Gap, SD should be included in the EJ Analysis</p> <p>Water within the 20-mile buffer? Or outside of 20-mile buffer</p> <p>20 mile buffer did not consider the flows of water or related aquifers.</p>	

			<p>ensure protection of the underground sources of drinking water and to facilitate public notification and access to information in the event of noncompliance with permit requirements. The EPA will continue to assess potential EJ considerations and is inviting review and comment on this draft EJ analysis.</p> <p>[ATTACHMENT: "00528_DavidFrankelARMCommentsEPADBJune2017-7.0final.pdf"]</p> <p>Buffalo Gap, SD tested 500% higher for Uranium in its water than Edgemont, SD. Based on the foregoing, the Town of Buffalo Gap, SD should be included in the EJ Analysis.</p> <p>For the foregoing reasons, and based on the foregoing comments, the undersigned hereby object to the issuance of the proposed permits to Powertech.</p>		
00565	Ex. 6 Personal Privacy (PP)	Thunder Valley Community Development Corporation	<p>Besides these general concerns, I would like to discuss several issues with the draft permits. The first is that the Environmental Justice (EJ) section does not adequately consider the impacts of the proposed mine and deep disposal wells on Lakota people. The area covered in considering EJ issues is inadequate, as they include no reservation lands. Environmental Justice concerns should clearly include the Pine Ridge and Cheyenne River Reservations, which will be directly impacted if this project is permitted, as they are downstream.</p>	<p>EJ Analysis inadequate when considering impacts on Lakota People.</p> <p>EJ analysis does not consider the impacts of the proposed mine and deep disposal wells on Lakota people. Should include the Pine Ridge and Cheyenne River Reservations, downstream from site.</p>	Ex. 5 Deliberative Process (DP)
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>I want to support the comments from the two University of Minnesota students on your analysis of environmental justice. You need to look at how your Agency's actions, your permits, your inactions are affecting or how they are not considering an already marginalized people.</p>	<p>EJ Analysis does not consider marginalized people.</p> <p>EJ Analysis does not consider an already marginalized people.</p>	
07461 (5/9 Rapid City hearing)		Individual	<p>JULIE SANTELLA: Hi. My name is Julie Santella. I'm a graduate student in geography at the University of Minnesota in Minneapolis. I grew up in Sioux Falls, eastern part of the state. And I am humbled by all the people who have spoken yesterday and today, and a lot of what I am going to say is to reiterate what other folks have said.</p>		

		<p>And while the stated focus of these public hearings is on these draft permits and the exemption from the Safe Drinking Water Act for parts of the Inyan Kara aquifer, I want to focus my comments on another draft document being presented, the so-called Environmental Justice Analysis for this proposed project.</p> <p>I'm troubled by the way that public input on the EPA's EJ and tribal consultation processes has been underemphasized here when, in fact, these proposed permits and proposed aquifer exemption are questions of environmental justice in really important ways, and these considerations of environmental justice or injustice ought not to be bracketed off from the rest of the project approval process.</p> <p>So my concerns with the EJ process are many. First, as many people have been noting yesterday and today, the proposed project area as well as this place where we are meeting today is contained within treaty territory, as defined by the 1851 and 1868 Fort Laramie Treaties.</p> <p>And therefore, when developing the National Historic Preservation Act draft compliance and Environmental Justice draft analysis documents, the EPA's analysis is already flawed in saying that the site in question is not located on tribal lands.</p> <p>[...]</p> <p>So even if I agreed with the bounded nature of the EPA's considerations with regard to environmental justice, considering only a 20-mile buffer zone around the proposed project area, even within those bounds I would consider its environmental justice process inadequate. But I don't agree with those boundaries.</p> <p>And I'm concerned about the way that this analysis for environmental justice fails to account for potential impacts of this project beyond these geographic boundaries, and also the failure to recognize the way the environmental follow-up in this project stands to build upon layers of historic environmental injustice experienced in this region.</p> <p>[...]</p> <p>I am no expert when it comes to geology, and I'm hopeful that you will listen to the many scientists, hydrologists, geologists who are working hard to understand the geology of this region better and have reason to question the safety of this proposed project and its -- and its ramifications for communities beyond this bounded 20-mile area.</p> <p>But I'm also concerned about the EPA's failure to recognize that the communities who stand to be harmed by this project have experienced significant historic injustice when it comes to land and resource development. Even if we look only to past uranium projects, we find a more nuanced understanding of injustice in this region.</p>	<p>EJ and tribal consultation have been underemphasized here.</p> <p>Treaty issues NHPA and EJ is incorrect because we say the site is not located on tribal lands.</p> <p>20-mile Buffer 20 mile buffer zone is not adequate EJ Analysis fails to account for potential impacts beyond the 20 mile buffer. Hydrologists, scientists and geologists are ignored about the 20 mile buffer.</p> <p>Historic Injustice Ignored EJ analysis fails to recognize significant historic injustice Cheyenne River is polluted as a result of past mining activities including downstream communities. Colonial dispossession of native lands and resources should be considered at layers of injustice.</p>	<div>Ex. 5 Deliberative Process (DP)</div>
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			<p>Just yesterday we heard further confirmation that the Cheyenne River is in fact polluted as a result of past mining activities with impacts for downstream communities, including Pine Ridge, Cheyenne River, and other Native communities.</p> <p>[...]</p> <p>I'm also not -- no expert on lived experience of these layers of injustices, and this is not just as a result of uranium mining, but of land theft, logging activities, other mining operations that all over have been, continued to be made possible by colonial dispossession of native lands and resources.</p> <p>And my hope is that you will listen to all these people gathered here today, explaining these layered impacts of these projects on their communities. I hope that you will listen when they tell you that your mechanisms for tribal consultation are inadequate at best and insulting at worst. And I hope you will rethink your definition of environmental justice.</p>	<p>Area beyond the 20-mile area. Concern is raised about the ramifications for communities beyond the bounded 20 mile radius.</p>	<p>Ex. 5 Deliberative Process (DP)</p>
07461 (5/9 Rapid City hearing)	<p>Ex. 6 Personal Privacy (PP)</p>	Individual	<p>Ex. 6 Personal Privacy (PP) Okay. Thanks a lot for allowing me to speak today. My name is</p> <p>Ex. 6 Personal Privacy (PP) I'm also a graduate student in the Department of Geography at the University of Minnesota. I hold an M.A. in Environmental Studies with an interdisciplinary focus on Environmental Justice from Macalester College, as well as a B.A. from the University of Minnesota. And I grew up in Spearfish, South Dakota.</p> <p>So today I also want to make comments with respect to the draft Environmental Justice Analysis that the EPA produced for this project.</p> <p>Environmental justice is defined by the EPA as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."</p> <p>But the concept and definition of environmental justice were developed not by the EPA itself, but by social movements led by Native nations, black activists, migrants, poor people, and women, namely the people standing behind me here today.</p>		

		<p>Environmental justice was institutionalized via executive order in 1994 and '95 and developed and expanded via agency plans. But while the EPA's definition of environmental justice has narrowed significantly, ours, for those social movements, has expanded drastically.</p> <p>The two parts to the EPA's Analysis of the Dewey-Burdock Project on Environmental Justice primarily concern first the assessment of the project area, which is defined as 20 miles surrounding the Dewey-Burdock project itself, and even within this area that includes the community of Edgemont, the EPA concludes that there are, in fact, communities that qualify as overburdened and face -- have significant health impacts related to past environmental activities on the land.</p> <p>But mostly what I want to talk about today is whether participation and consultation are adequate to the EPA's stated standards of fair treatment and meaningful involvement of the folks who have gathered here today.</p> <p>And so I guess my question, my main question is why limit environmental justice analysis to these communities, the 20 miles surrounding Dewey-Burdock, when historically and legally, we all know that this is tribal land and, at the very least, that the project does indeed impact Native nations.</p> <p>The EPA, it seems to me, implicitly agrees with this sentiment for in the EJ analysis, in the second part, they attempt -- they state that they attempt to take enhanced measures to collect input from Native peoples, including, they argue, these very public participation meetings today which were located, supposedly, closer to tribal communities so that -- to facilitate their appearance here today.</p> <p>Many speakers have already commented on consultation, and I think that they are far more qualified to do so than I. So I just want to use my remaining time to comment on public participation in environmental review.</p> <p>And I think what we need to ask ourselves is -- and the EPA, is whether participation today qualifies as meaningful. What is a meaningful contribution and comment to this project?</p> <p>The gracious EPA agents are at pains to tell us that we -- that our comments are being listened to and heard and will be responded to in the final permits that they will grant, but we all know that actions speak louder than words.</p> <p>And the inadequacy of the EPA analysis could be fixed based on our comments that we give today, but I hope you understand our extreme skepticism that it will be. For example, after the head of the EPA's EJ division, Mustafa Ali, resigned two months ago and indicated that the department's future could be at risk under the current administration.</p> <p>So to me and many EJ scholars, what meaningful commitment and -- or, comment and participation might do would recognize the participants who are speaking here today, especially those who come from Native nations, as the experts on the region, its water and its land.</p>	<p>Participation and consultation are both inadequate.</p> <p>20-mile Buffer 20 mile buffer is inadequate. Meaningful participation should be expanded spatially and historically.</p>	<p>Ex. 5 Deliberative Process (DP)</p>
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			<p>And possible conditions that you could all attach to future permitting that would create meaningful participation would recognize this: By expending -- expanding the spatial and historical parameters of the Environmental Justice Analysis beyond the immediate 20-mile radius; to include the long history of dispossession, broken treaties, and contamination of Native land and bodies.</p> <p>This would recognize that what justice means is something far more than what goes on in this five-minute speech or anything like that, but much longer, a process of redress and reconciliation.</p> <p>I think that in order to do this, you would have to recognize that the expert analysts are the people in this room and who have spoken to you over the last few days and not the experts from Powertech and their consultants.</p> <p>So I suggest that perhaps one thing you might think about doing is, instead of using us and our free time to supplement their income and projects, is instead to hire everyone in this room to complete the consultation process of the environmental justice draft permit. I think that this would begin to develop a meaningful participation by including us in a real dialogue.</p> <p>Thank you to everyone who has spoken today, and I look forward to submitting longer written comments to this panel.</p>	Consultation is inadequate	<div>Ex. 5 Deliberative Process (DP)</div>
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Letter ID	Commenter Name	Commenter Org	Text	OST Comments	Issues Addressed	Narrative/Change in Analysis
OST Letter	Page 1	OST	The EPA largely sidesteps both treaty and cultural issues. EPA’s reliance on the NRC’s cultural resources analysis, was used and shouldn’t be used as it is tied up in legal proceedings with OST over the analysis of groundwater impacts, waste disposal sites, mitigation measures, and cultural resources.		Treaty and Cultural issues The EPA shouldn’t use the NRC’s cultural resource analysis since it is still in litigation.	Ex. 5 Deliberative Process (DP)
Ost Letter	Page 2	OST	The EPA is appearing to separate treaty issues and the significance of the Black hills as a sacred site from their technical responsibility to protect underground sources of drinking water. However, the EPA must consider potential adverse impacts to human health from a cultural perspective as well as from a technical/scientific perspective, and the EPA must remember that per Article 6 of the US Constitution, treaties remains the supreme law of the land. The EPA cannot separate scientific and technical questions from cultural and legal questions.		Treaty Rights and Sacred Sites seperated from responsibility to protect underground sources of Drinking Water	

					Ex. 5 Deliberative Process (DP)
OST Letter	Page 2	OST	The impacts from historic mining in the Black Hills region, detailed in section 7.4 of the Draft Revised Environmental Justice Analysis, must be meaningfully considered, not simply acknowledged and dismissed.	Historical mining needs to be considered	
OST Letter	Page 2-3	OST	Given that the proposed D-B site is upgradient from the Pine Ridge Indian Reservation, specific impacts to the Oglala Sioux Tribal lands and communities must be considered. The EPA says it has expanded the geographic scope of its EJ analysis since 2017, but it still does not take into account potential impacts to reservation communities, in particular those communities which have been proven detrimentally impacted by mining activities in the past, including Red Shirt and communities along the White River.	Oglala Sioux Tribal Lands must be considered	

					Ex. 5 Deliberative Process (DP)
OST Letter	Page 3	OST	In relation to potential impacts to OS Tribal lands and communities, the following must be meaningfully considered: Crow Butte ISL operation near Crawford NE 1962 tailings spill in Edgemont SD Historic uranium mining in the greater southern Black Hills area Oil and gas operations in Converse County Wyoming Historic and ongoing uranium mining operations in Wyoming headwaters region, including the first low PH (acid) ISL uranium operation in the US Peninsula/Strata's Ross Project Wastewater disposal by the City of Edgemont into the Cheyenne River, which involved effluent violations of pH in 2015 and 2016	Other areas must be considered	
OST Letter	Page 3	OST	Numerous issues have been documented in relation to the White Mesa Mill, including transportation incidents, questionable remaining storage capacity as companies increase the amount of waste material sent to the Mill to the Ute Mountain Ute White Mesa community, the impacts of sending Dewey-Burdock waste material to White Mesa merit further consideration by the EPA.	White Mesa Mill needs to be considered	
OST Letter	Page 4	OST	Issues with the Draft EJ analysis are closely related to the EPA's Draft Cumulative Effects Analysis, and thus if the aforementioned concerns do not directly apply to matters of EJ, they should be relevant to the matters of Cumulative Effects.	If issues aren't considered in EJ Analysis, they should be considered in Cumulative Effects Analysis	
Letter ID	Commenter Name	Commenter Org	Text POWERTECH Comments	Issues Addressed	
Powertech letter,	Table 5	Page 60	In the 1 st full paragraph on this page, the statement is made that "Certain types of UIC permits have been identified as priority permits, including permits for Class V deep injection wells and Class III ISR wells" by EPA Region 8 "due to the potential for significant public health or environmental impacts." In light of the evidence that there has never been an off-site impact to non-exempt groundwater after decades of uranium ISR operation in the U.S., Powertech requests explanation as the source of this "potential for significant public health or environmental impact."	What is source of statement "Potential for significant public health or environmental impact"	

Powertech Letter	Table 5	Page 60	<p>The statements are made that “The proposed Class III Area Permit requires Powertech to develop a Wellfield Closure Plan that is based on the Conceptual Site Model required in Part IV, Section A and geochemical modeling required in Part IV, Section B. The purpose of the geochemical modeling is to evaluate the potential for ISR contaminants to cross the aquifer exemption boundary into the surrounding USDWs. Part IV, Section C of the proposed Class III Area Permit includes requirements to calibrate the geochemical model for each wellfield based on site-specific sampling and analysis of the geochemical and water quality information acquired according to the specifications in the Conceptual Site Model. The Conceptual Site Model includes monitoring requirements that are tied to the timing of groundwater restoration and stability monitoring phases as discussed under Section</p> <p>12.6.4. The Wellfield Closure Plan shall demonstrate that the wellfield closure, including plugging and abandonments of all wellfield injection and production wells, will result in adequate protection of USDWs as required under 40 CFR § 146.10(4). If the Closure Plan does not demonstrate adequate protection of USDWs, the Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs to fulfill the requirements under 40 CFR § 146.10(4). For a more detailed discussion of wellfield monitoring, see the Class III Area Permit Fact Sheet, Section 12.0. The EPA proposes to include stringent characterization requirements in the Class V deep injection well permit to ensure that injection zone fluids remain within the injection zone.” NRC license requirements are adequate to ensure protection of the non-exempt aquifers surrounding the wellfields. Powertech requests replacing the above text as follows:</p> <p>The EPA has reviewed NRC requirements to ensure that ISR contaminants potentially migrating out of the ISR wellfield will not cause a violation of MCLs or otherwise adversely affect human health outside of the exempted aquifer.</p>	<p>The ISR contaminants potentially migrating out of the ISR wellfield will not cause a violation of MCL or adversely affect human health outside of exempted aquifer.</p>	<div>Ex. 5 Deliberative Process (DP)</div>

Powertech letter	Table 5	Page 60	“The proposed EPA UIC Class III permit requires Powertech to demonstrate through geochemical modeling, calibrated by monitoring in the field, that no ISR contaminants will cross the aquifer exemption boundary into USDWs.” Powertech requests that EPA revise this statement to “The proposed EPA UIC Class III permit requires Powertech, consistent with NRC requirements, to meet the federal standards under 10 CFR Part 40, Appendix A, Criterion 5 for protection of USDW’s outside of the aquifer exemption boundary.”	Are the permit NRC requirements protective of the USDWs outside of the aquifer exemption?	Ex. 5 Deliberative Process (DP)
Powertech letter	Table 5	Page 61	Consistent with a number of previous comments, Powertech requests the following edits: The UIC proposed permit requirements: <ul style="list-style-type: none">- consider effects to the downgradient underground sources of drinking water and private wells completed in the injection zone by requiring Powertech to develop a wellfield closure plan including a geochemical model and targeted monitoring requirements to verify that no ISR contaminants cross the aquifer exemption boundary;- include in the proposed revised Class III permit, a robust conceptual site model designed to support geochemical models calibrated by field sampling and monitoring programs that will lead to a wellfield closure plan designed to protect USDWs;	Does this proposed language cover the permit requirements?	
Powertech letter	Table 5	Page 61	Consistent with a number of previous comments, Powertech requests the following edits: <ul style="list-style-type: none">- impose requirements for additional hydrogeologic characterization and monitoring that must be met before the EPA will authorize operation of the injection wells, including:<ul style="list-style-type: none">o extensive evaluation and characterization of injection zone and confining zone hydrogeologic conditions for both the Class III ISR and Class V deep injection wells;o protective construction and operating requirements for injection wells;o and demonstration that extensive excursion monitoring programs are in place for the Class III wellfields that are designed to detect any threat to USDWs in a timely manner enabling Powertech to implement mitigation measures before USDWs are impacted;	Should this language be removed from the EJ Analysis?	
Letter ID	Commenter Name	Commenter Org	Text	Issues Addressed	
8268	Ex. 6 Personal Privacy (PP)	Individual	Santella new comments. I live in Rapid City, SD. I grew up in eastern South Dakota, moved away for a number of years, and moved back within the last few years. This is my home. In plain language, I can tell you that the vast majority of people I know, and especially people in the southern Black Hills, do not wish for the DeweyBurdock project to open. I can tell you that an even higher percentage of Lakota people, whose ancestors and relatives have called the Black Hills home since the	Powertechs request for deep injection well permits should be denied?	

			beginning of time, who have spiritual and cultural connections to this place beyond what you and I as non-Native people can understand, do not wish for the Dewey-Burdock project to open. I implore you to listen to what people here are asking of you, which is to deny Powertech’s request for deep injection well permits at Dewey-Burdock.		Ex. 5 Deliberative Process (DP)
8268	Ex. 6 Personal Privacy (PP)	Individual P78	The EPA's draft environmental justice analysis raises important points related to the significance of the Black Hills as a sacred site and related to treaty obligations, but the EPA appears to separate these issues from their responsibility to protect underground sources of drinking water. As the EPA states, "The purpose of the UIC regulations is to prevent the movement of fluids containing contaminants into USDWs if the presence of those contaminants may cause a violation of a primary drinking water regulation or otherwise adversely affect human health." The EPA must consider potential adverse impacts to human health from a cultural perspective as well as from a technical/scientific perspective, and the EPA must remember that per Article 6	Should the EJ analysis separate the Black Hills as a sacred site and treaty obligations from the obligation to protect underground sources of drinking water?	

			<p>of the US Constitution, treaties remain the supreme law of the land. The EPA cannot separate scientific and technical questions from cultural and legal questions.</p> <p>Further, an environmental justice analysis must do more than just pay lip-service to an expanded study area. In particular, specific impacts to specific Indigenous communities are not considered. The Black Hills sits up-gradient and serves as a headwaters zone for watersheds to the east. In particular, Wakpa Waste, or the Cheyenne River, flows from the Dewey-Burdock area through the northwestern corner of the Pine Ridge Indian Reservation and serves as the southern boundary of the Cheyenne River Reservation before joining the Missouri River. At a bare minimum, specific impacts to Oglala Sioux Tribe and Cheyenne River Sioux Tribe lands and members must be considered in relation to this proposal, particularly in light of the prior contamination both reservations have experienced as a result of historic mining activities.</p>		Ex. 5 Deliberative Process (DP)
8268	Ex. 6 Personal Privacy (PP)	Individual P133	<p>The Dewey-Burdock area is part of ancestral Lakota homelands as well as within the boundaries of the 1851 and 1868 Fort Laramie Treaties with the Great Sioux Nation (Oceti Sakowin). In 1980, the US Supreme Court acknowledged that the US government had stolen the Black Hills, in violation of the 1868 Fort Laramie Treaty.</p>	Violates the Fort Laramie Treaty	

8268	Ex. 6 Personal Privacy (PP)	Individual P205	<p>Dear Ms. Valois Robinson:</p> <p>I am writing to submit comments on the proposed Dewey-Burdock project in southwestern South Dakota, Docket ID: EPA-R08-OW-2019-0512.</p> <p>First, required engagement with Tribal Nations, in the form of govt-to-govt consultation per Executive Order 13175 and in compliance with Section 106 of the National Historic Preservation Act, has barely begun. These draft permits should not have been issued before proper and meaningful Tribal consultation takes place, especially given that the EPA is explicitly seeking comments on "the identification of traditional cultural properties at the Dewey-Burdock Project Site."</p> <p>[...]</p> <p>If the EPA is interested in the cultural significance of the Dewey-Burdock area, it must meaningfully consult with Indigenous peoples who have been the caretakers of these lands since time immemorial.</p> <p>Next, the EPA's reliance upon the Nuclear Regulatory Commission's cultural resources analysis is wholly inappropriate, given that the NRC process remains tied up in ongoing and unresolved litigation brought by Oglala Sioux Tribe. In 2015, the Atomic Safety and Licensing Board ruled that the NRC staff had failed to comply with the National Historic Preservation Act in this matter. In 2018, the US Court of Appeals for the District of Columbia upheld that decision, ruling again that the NRC staff had failed to properly identify and consider impacts to cultural resources related to the proposed Dewey-Burdock project. Therefore, when the EPA notes in its draft National Historic Preservation Act Compliance document that the NRC's review of cultural resources "appears sufficient," they are contradicting both the ASLB and the DC Court of Appeals. The NRC Programmatic Agreement, referenced in the National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened.</p>	<p>Tribal Consultation</p> <p>Reliance on NRCs cultural analysis is wholly inappropriate</p>	Ex. 5 Deliberative Process (DP)

			From my reading, the EPA’s Cumulative Effects document does not reference cultural matters , which, to serve as functionally equivalent to NEPA compliance, it must.	Cumulative Effects document should reference cultural matter and because it doesn’t does not serve as a functionally equivalent to NEPA compliance?	Ex. 5 Deliberative Process (DP)
8268	Ex. 6 Personal Privacy (PP)	Individual P305	Throughout these documents, the EPA appears to be relying heavily on the NRC and SD Department of Environment and Natural Resources draft permits/analyses. The DENR permits have not been issued, and while the NRC license is technically issued, it’s tied up in litigation. The EPA is legally required to conduct its own environmental analysis , not just rely on other agencies.	EPA shouldn’t rely on other agencies for its environmental review.	
8268		Individual P591	The EPA must require Powertech to properly plug all historic boreholes and reclaim all historic mines in the project area, and prove this has happened satisfactorily, before they are issued a permit to mine.	Plug all Historic boreholes	
8268		Individual P660	Further, the EPA dismisses the impacts of waste material disposal at the White Mesa Mill, including impacts to the White Mesa Ute community. Many issues have been associated with White Mesa. Concerns have been raised related to transportation incidents, groundwater contamination, and storage capacity. The argument that material from Dewey-Burdock would be so small that it is “not	White Mesa Mill	

			considered significant” is disappointing. Transporting solid waste to Utah should be considered a direct impact of the project proposal. This transportation process is also directly related to the liquid disposal, because the dewatering process plays a role in the constituents that will be found in waste streams and threats posed by transporting radioactive slurries.		Ex. 5 Deliberative Process (DP)
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